

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

KUGLER, District Judge:

CASE MANAGEMENT ORDER NO. 25: Appointment of Parties' Settlement Counsel

IT APPEARING TO THE COURT that a fair and equitable way to advance settlement negotiations in this Multi-District Litigation ["MDL"] is to ask each party to nominate settlement counsel to represent it in MDL settlement negotiations conducted by the Settlement Special Masters: the Honorable (Ret.) Gregory M. Sleet, and the Honorable (Ret.) Lawrence F. Stengel,

IT ALSO APPEARING TO THE COURT that asking each party to so nominate not only furthers the settlement process in this MDL but also respects the preferences of each party,

IT ALSO APPEARING TO THE COURT that, according to the Local Rules of this Court (See Appendix 1.0 hereinbelow), the Settlement Special Masters have authority to appoint formally settlement counsel for each party, and

EACH PARTY HAVING NOMINATED its own settlement counsel, as listed in Appendix 2.0
hereinbelow,

IT IS HEREBY ORDERED on this 3rd day of March 2022 that pursuant to the authority granted to the Settlement Special Masters:

each settlement counsel nominated in Appendix 2.0 is appointed formally as such for the corresponding party; and

IT IS FURTHER ORDERED that the Court consents to the Settlement Special Masters' appointment of settlement counsel for each party.

s/Lawrence J. Stengel
Honorable (Ret.) Lawrence J. Stengel
Special Master

s/Gregory M. Sleet
Honorable (Ret.) Gregory M. Sleet
Special Master

s/Robert B. Kugler
Honorable Robert B. Kugler
United States District Judge

APPENDIX 1.0 Authority of Special Masters to Appoint Settlement Counsel

1.1 Local Rules of the District of New Jersey

The authority of the Settlement Special Masters to appoint settlement counsel for each party arises specifically from Local Rule 301.1 (f) in concert with Appendix Q of the Local Rules, which states:

(f) Guidelines for Mediation:

The Court, the Clerk, the parties, attorneys and mediators are hereby referred to the Guidelines for Mediation (Appendix Q to these Rules) for their information and guidance in civil actions referred to mediation pursuant to this Rule. Said Guidelines for Mediation shall have the same force and effect as the provisions of this Rule.

1.2 Appendix Q Of The Local Civil Rules. Guidelines For Mediation

Appendix Q states:

II. Mediator's Responsibility for Managing the Mediation Process

A. When a case is referred to mediation the compliance judge shall designate a mediator or co-mediators as may be appropriate. With the designation of a mediator the Court has delegated to him or her the authority to control and regulate the mediation process, including: ...

(3) Determining and designating the appropriate representatives of parties, including individuals with settlement authority or other specific individuals, to attend mediation sessions.

Inasmuch as the Court has appointed Settlement Special Masters in this MDL and has asked them to regulate settlement negotiations, which is a mediation process, the Court has delegated to the Special Masters the authority to determine and designate settlement counsel for the parties.

1.3 District of New Jersey's Mediation website

Further support for the authority of the Settlement Special Masters also arises from the District of New Jersey's Mediation website, found at <https://www.njd.uscourts.gov/mediation>, which provides the following guidance to parties litigating before this Court:

"Any district judge or magistrate judge may refer a civil action to mediation. This may be done without the consent of the parties. However, the Court encourages parties to confer among themselves and consent to mediation. Moreover, you are reminded that, when counsel confer pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and Local Civil

Rule 26.1, one of the topics that must be addressed is the eligibility of a civil action for participation in ADR.

A civil action may be referred to mediation at any time.” ...

“If parties consent to mediation, they may choose a mediator either from the list of certified mediators maintained by the Court or by the selection of a private mediator. If a civil action is referred to mediation without consent of the parties, the judicial officer responsible for supervision of the program will select the mediator.”

In summary, the Local Rules and the Court’s guidance to litigants, taken together, authorizes the Court to refer a matter to mediation even without the parties’ consent. Nonetheless, this Court has not acted without the parties’ consent or arbitrarily. To the contrary, this Court has named eminently qualified mediators as Settlement Special Masters, afforded the parties’ consent by inviting them to nominate their own preferred attorneys as settlement counsel, and then ensured these preferred attorneys were appointed as settlement counsel by the Settlement Masters.

APPENDIX 2.0**SETTLEMENT COUNSEL APPOINTED HEREWITH**

| PARTY | SETTLEMENT COUNSEL |
|---|---|
| Plaintiffs | ROBERT GILBERT Kopelowitz, Ostrow, Ferguson, Weiselberg & Gilbert 2800 Ponce de Leon Blvd, Suite 1100 Coral Gables, FL 33134 (305) 384-7270 gilbert@kolawyers.com |
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| Hetero Labs/Drugs, Hetero USA, and Camber | JOHN SHIPP Shipp ADR 8150 N. Central Expressway, II-South Tower, Dallas, Texas 75206 (214) 543-4095 john@shippadr.com |
| Mylan Pharmaceuticals | STU WILLIAMS Wilson Sonsini Goodrich & Rosati 1301 Avenue of the Americas, 40th Floor New York, NY 10019-6022 (212) 999-5801 williams@wsgr.com |

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